P.R. No. 572/06 Manish Kr. Pandey
Presented by Shri
dated 02/3/06

Single Bench

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)

S.A.No. 104 /06(S.B.)

APPELLANT
PLAINTIFF

Raymoti S/o Roup Sai,
Aged about 42 years W/o Jethu, Occupation-Former,R/o slihabhatha, Teh.-Gharghoda, Distt.-Raigarh(C.G.)

VERSUS

RESPONDENTS
DEFENDANTS

1. Bhagwati W/o Nanhe Gond
2. Bhagirathi S/o Gajadher Gond
3. Purna S/o Gajadher Gond
   R/o No. 1 Village Liabra & No2&3 Village Karapali, Teh. Gharghoda, Distt. Raigarh
4. State of C.G.
   Through:-Collator, Raigarh

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APPEAL UNDER SECTION 100 OF CIVIL PROCEDURE COED

(21)

HIGH COURT OF CHHATTISGARH, BILASPUR

SECOND APPEAL NO. 104/2006

Raymoti

Vs.

Bhagwati and others

Appearance :

Shri V.K.Pandey, counsel for the appellant.

ORAL ORDER

(20.6.2006)

SUNIL KUMAR SINHA, J

Heard on admission.

(2) This is the plaintiff's Second Appeal, filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 5.1.2006 passed in Civil Appeal No. 27-A/2002 by the 3rd Additional District Judge(FTC), Raigarh(CG) arising out of the judgment and decree dated 1.8.2001 passed in Civil Suit No.19-A/1997 by the Civil Judge, Class-II, Gharghoda. The plaintiff lost in both the courts.

(3) The facts of the case are that the suit land described in Schedule-A of the plaint were the properties of ownership and possession of father of the plaintiff and original defendant namely-Ratai Bai. Plaintiffs, Raymoti and Ratai Bai were the real sisters. The plaintiff claims that the lands of Schedule-A of the plaint were given in her absolute ownership and possession by her father namely-Rupsai on 20.4.1955 by making a partition in the family. She claims

to be in exclusive possession of the suit lands from the date of partition and since the defendants claimed a partition in this property also, she filed the suit for declaration of title and also for confirmation of possession on the basis of her title. The claim was resisted by the defendants. They pleaded that the suit lands were never given in the ownership and possession of the plaintiff and as such there was no partition in the family. The trial Judge framed various issues in this case and vide answer to issue No.3 and 4, it was held that the plaintiff could not prove that the suit lands were given to her in absolute ownership and possession by her father on 20.4.1955 and further also she could not prove a partition as pleaded by her. On these grounds, the suit was dismissed.

(4) Against the aforesaid judgment and decree passed by the trial Court, the plaintiff filed an appeal before the lower appellate court. But, the lower appellate court also took the same view and dismissed the appeal of the plaintiff.

(5) Learned counsel for the appellant/plaintiff argues that the findings in relation to the partition as well as delivery/transfer of property in favour of the plaintiff are perverse. His submission is that the trial Court completely ignored the oral as well as documentary evidence adduced in this case. He refers to the document Exhibit P-1, which is an *Ekrarnama* (Agreement) in which it has been mentioned that the father of the plaintiff had given the suit lands in her absolute ownership and possession on 20.4.1955. This document is said to have been written at the instance of Rupsai(father), whose thumb impression is shown to be on the document.

(6) The learned trial Judge took this view that the contents of the documents have not been proved in accordance with law and further that there is only oral evidence of partition as adduced by the plaintiff. The trial Court also took this fact into notice that all the revenue records stand on the joint names of plaintiff and defendants which suggest that after the death of the father, the property was succeeded by the two daughters and both of them were the joint owners of the said property. It is on these grounds, the suit was dismissed and the claim of the plaintiff that she was the absolute owner of the property was not upheld. Similar view has also been taken by the appellate court.

(7) After going through the records of the case, I am of the opinion that the concurrent findings recorded by the two Courts below are not perverse and the appeal does not involve any substantial question of law, worth consideration. There is no merit in the appeal. The same is dismissed at the motion stage itself.

Sd/-
Sunil Kumar Sinha
Judge

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